

SERVICE DATE - AUGUST 23, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-101 (Sub-No. 17X)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ST. LOUIS COUNTY, MN

Decided: August 21, 2002

By petition filed on May 7, 2002,¹ Duluth, Missabe and Iron Range Railway Company (DM&IR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 2-mile portion of the line known as the Sliver Branch, between milepost S-0.0 and milepost S-2.0, in the City of Virginia (the City), St. Louis County, MN. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

DM&IR is a Class II rail carrier that operates in northwestern Minnesota, primarily serving the taconite pellet producing plants on the Iron Range. It was formed in 1937 from the consolidation of the Spirit Lake Transfer Railway with the Duluth Missabe and Northern Railway Company. The United States Steel Corporation owned DM&IR until it became a subsidiary of Transtar, Inc., in 1988. DM&IR has been a wholly owned subsidiary of Great Lakes Transportation, LLC since March 2001. The Sliver Branch was constructed in approximately 1910 to serve the Prindle and Sliver Mines in the City. It consisted of four miles of right-of-way, connecting to DM&IR's track system at the Virginia Branch. Spur track was added subsequently to serve local industries.

Today, both the Prindle and Sliver Mines have ceased production. The sole customer served by the Sliver Branch is Ferrellgas, Inc. (Ferrellgas), a propane gas storage/distribution company. Over the past five years, Ferrellgas has received an average of 55 tank cars of propane annually over the Sliver Branch. According to DM&IR, Ferrellgas has discussed relocating its traffic to the Duluth, Winnipeg & Pacific Railway Company's yard located 0.25 miles west of the Ferrellgas facility. Ferrellgas states that loss of service from DM&IR will have no detrimental effect on its business and operations, and that it supports the proposal to abandon the line and discontinue service.

¹ Notice was served and published in the Federal Register on May 24, 2002 (67 FR 36668).

The section of track proposed for abandonment runs through a residential and commercial neighborhood, crossing city streets at nine different points. The right-of-way extends 50 feet on either side of the track. After abandonment, DM&IR intends to remove track materials and grade crossings from the area, including the crossing and traffic protection devices from State Highway 53. DM&IR will continue to own a small segment of the right-of-way. The remainder of the right-of-way will revert to other owners. The City supports DM&IR's plan. DM&IR states that, because no vital interest of shippers, competitors or communities will be adversely affected, and because the abandonment exemption it seeks will remove the burdens associated with ownership and maintenance of this line, it should be permitted to abandon this section of track using the Board's abandonment exemption procedures.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving DM&IR from the expense of owning and maintaining a line that generates marginal amounts of traffic and by allowing DM&IR to use its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because Ferrellgas, the sole shipper on the line, does not oppose the proposed abandonment and has satisfactory alternative transportation service available. Nevertheless, to ensure that Ferrellgas is informed of our action, we will require DM&IR to serve a copy of this decision on the shipper within 5 days of the service date and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

DM&IR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 5, 2002, and requested comments.

No comments to the EA were filed by the August 5, 2002 due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.²

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by DM&IR of the above-described line subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. DM&IR is directed to serve a copy of this decision on Ferrellgas within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 30, 2002, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on September 22, 2002. Petitions to stay must be filed by September 9, 2002, and petitions to reopen must be filed by September 17, 2002.

² Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by June 13, 2002.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), DM&IR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DM&IR's filing of a notice of consummation by August 23, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary